

APPEAL NO. 171182
FILED JULY 24, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 25, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that an attorney's fee in the amount of \$2,741.25 is reasonable and necessary for services rendered from September 25, 2016, through January 31, 2017, in Sequence Nos. 6 (dated October 5, 2016), 9 (dated November 3, 2016), 10 (dated December 5, 2016), 13 (dated January 30, 2017), and 14 (dated February 7, 2017). The hearing officer further determined that the attorney fee awards in Sequence Nos. 6, 9, 10, 13, and 14 were not timely disputed and were affirmed.

The appellant (claimant) appealed the hearing officer's determination, arguing that he notified the Office of Injured Employee Counsel (OIEC) on February 9, 2017, that respondent 1 (attorney) should reimburse attorney's fees received; that February 9, 2017, was less than 15 days following the issuance of the attorney fee order in Sequence No. 14 and that such contact with OIEC should be sufficient to document his wish to dispute the award of attorney fees. The claimant further indicated that he relied on his attorneys to take care of his claim and, for such reason, he did not read the attorney fee orders and was unaware of his right to dispute attorney fees awarded by the Texas Department of Insurance, Division of Workers' Compensation (Division) until he learned on February 8, 2017, of his attorney's withdrawal from representation in his claim. The appeal file does not contain a response from the attorney to the claimant's appeal. Respondent 2 (carrier) was excused from attending the CCH. The appeal file does not contain a response from the carrier to the claimant's appeal.

DECISION

Reversed and rendered.

Prior to January 30, 2017, 28 TEX. ADMIN. CODE § 152.3(d) (Rule 152.3(d)) provided, in part, that except as provided in subsection (e), an attorney, claimant, or carrier who contests the fee fixed and approved by the Division shall request a CCH no later than the 15th day after receipt of the Division's order.

Rule 152.3(d) was amended effective January 30, 2017, to provide, in part, that to contest a Division order approving an application for attorney fees, an attorney, claimant, or insurance carrier must request a CCH no later than the 20th day after receipt of the Division's order.

Rule 102.5(d) provides in pertinent part that, unless the great weight of the evidence indicates otherwise, the Division shall deem the received date of its written communications, including the attorney fee orders at issue, to be 5 days after the date mailed via United States Postal Service regular mail.

**TIMELINESS OF CLAIMANT'S REQUEST FOR CCH FOR ORDERS FOR
ATTORNEY'S FEES IN SEQUENCE NOS. 6, 9, AND 10**

It is undisputed that:

1. The attorney fee order in Sequence No. 6 was issued on October 5, 2016, and was deemed to have been received by the claimant on October 10, 2016.
2. The attorney fee order in Sequence No. 9 was issued on November 3, 2016, and was deemed to have been received by the claimant on November 8, 2016.
3. The attorney fee order in Sequence No. 10 was issued on December 5, 2016, and, the 5th day after December 5, 2016, falling on a Saturday, was deemed to have been received by the claimant on December 12, 2016.

Pursuant to Rule 152.3(d), the claimant's request for a CCH to dispute the attorney fee order in Sequence No. 6 must have been filed no later than October 25, 2016. His request for a CCH to dispute the attorney fee order in Sequence No. 9 must have been filed no later than November 23, 2016; and his request for a CCH to dispute the attorney fee order in Sequence No. 10 must have been filed no later than December 27, 2016.

The claimant's request for a CCH disputing the attorney fee orders in Sequence Nos. 6, 9, and 10 was dated and filed with the Division on March 16, 2017, a date more than 15 days following the claimant's deemed receipt of such orders. For such reason, the Division's attorney fee orders, Sequence Nos. 6, 9, and 10 became final by operation of law.

**TIMELINESS OF CLAIMANT'S REQUEST FOR CCH FOR ORDERS FOR
ATTORNEY'S FEES IN SEQUENCE NOS. 13 AND 14**

It is undisputed that:

1. The attorney fee order in Sequence No. 13 was issued on January 30, 2017, and the 5th day after January 30, 2017, falling on a Saturday,

was deemed to have been received by the claimant on February 6, 2017.

2. The attorney fee order in Sequence No. 14 was issued on February 7, 2017, and, the 5th day after February 7, 2017, falling on a Sunday, was deemed to have been received by the claimant on February 13, 2017.

In his Finding of Fact No. 12, the hearing officer found the following:

12. Sequence No. 13 was approved on January 30, 2017, by the Division. Based on Rule 102.5(d), the order is deemed received on February 4, 2017, a Saturday. The next business day was February 6, 2017. Fifteen days after that date is February 21, 2017.

In his Finding of Fact No. 13, the hearing officer found the following:

13. Sequence No. 14 was approved on February 7, 2017, by the Division. Based on Rule 102.5(d), the order is deemed received on February 12, 2017, a Sunday. The next business day was February 13, 2017. Fifteen days after that date is February 28, 2017.

In calculating the 15th day following the date the attorney fee orders in Sequence Nos. 13 and 14 were deemed received, the hearing officer failed to consider and apply the amended Rule 152.3(d) which became effective January 30, 2017, to calculate the deadline for the claimant to request a CCH in order to dispute the Division's attorney fee orders in Sequence Nos. 13 and 14. As mentioned above, the amended Rule 152.3(d) provides that the request for CCH must be filed no later than the 20th day following receipt of the Division's order. We accordingly note that the 20th day after February 6, 2017, the deemed receipt date of the Division's order in Sequence No. 13, fell on Sunday, February 26, 2017. Pursuant to Rule 102.3(a)(3), the deadline for the claimant to request a CCH was February 27, 2017. We further note that the 20th day after February 13, 2017, the deemed receipt date of the Division's order in Sequence No. 14, fell on Sunday, March 5, 2017. Pursuant to Rule 102.3(a)(3), the deadline for the claimant to request a CCH was March 6, 2017.

The claimant's request for a CCH disputing the attorney fee orders in Sequence Nos. 13 and 14 was dated and filed with the Division on March 16, 2017, a date more than 20 days following the claimant's deemed receipt of such orders. For such reason, the Division's attorney fee orders, Sequence Nos. 13 and 14 became final by operation of law.

In the Discussion section of his Decision and Order, the hearing officer stated:

[The] [c]laimant did not dispute any of the disputed attorney fee orders until March 16, 2017. Because he did not dispute the orders until March 16, 2017, he did not timely dispute the orders and the Division does not have jurisdiction to hear the dispute. The orders for Sequence Nos. 6, 9, 10, 13, and 14 became final by operation of law.

We agree that the fee orders at issue became final by operation of law and that the Division is without jurisdiction under the facts of this case to reconsider the issue of attorney's fees for services rendered from September 25, 2016, through January 31, 2017. Accordingly, we reverse the hearing officer's decision that the attorney fee orders are affirmed and render a new decision that the attorney fee orders in Sequence Nos. 6, 9, 10, 13, and 14 have become final by operation of law because the claimant did not timely request a CCH pursuant to Rule 152.3(d) to contest the fee orders issued by the Division and that the Division is therefore without jurisdiction to consider the claimant's appeal of such orders.

The true corporate name of the insurance carrier is **MIDWEST EMPLOYERS CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge